

Academic Armchair: Queering Brexit



FEATURES

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Seeking to increase analyses of how Brexit will affect lesbian, gay, bisexual, trans, intersex, queer and other (LGBTIQ+) individuals, Dr Carmelo Danisi, Dr Moira Dustin and Professor Nuno Ferreira highlight

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the disproportionately detrimental impact leaving the EU could have both on the continuation of current legislation that protects LGBTIQ+ people and the future path of the UK post-Brexit in relation to furthering equality for LGBTIQ+ communities. Here's what the article's authors had to say...

To start our interview, we asked how the UK's trajectory in relation to LGBTIQ+ rights may change post-Brexit, given, as argued by the writers, the UK 'will not be obliged' to follow the path already mapped by the EU.

The background to the Queering Brexit article is also the background to the SOGICA research project. 'SOGICA – Sexual Orientation and Gender Identity Claims of Asylum: a European Human Rights Challenge' is a four-year project looking at the treatment of LGBTIQ+ asylum seekers in Europe (www.sogica.org).

It was conceived as a project about the treatment – and differential treatment – of individuals who make asylum claims based on their sexual orientation or gender identity (SOGI) in EU member states.

strange idea, a
magnificent trick

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When the idea for the project was conceived several years ago, there was no question in most people's minds of the UK leaving the EU.

People working on asylum, sexual orientation and gender identity – whether in universities, NGOs, as grass-roots campaigners, lawyers or policy makers – saw the development of the Common European Asylum System as the basic framework and lever for challenge going forward.

We wondered how this plan was affected by the Brexit vote.

By the time the project had received funding and started we were in a different world– one in which the UK will be going it alone and eschewing the mechanisms, structures, policy and guidance that EU membership brings.

Of course, there are unlikely to be immediate changes: on the day after the UK leaves the EU (if that day happens), asylum seekers are unlikely to see a sudden change in the way their claims are processed.

But over the long term, in the coming years,

LGBTIQ+ claimants are likely to need to rely on domestic UK law underpinned by the principles of the 1951 Refugee Convention and the 1950 European Convention on Human Rights, but without the important framework provided by the European Union – a framework that covers not only asylum and LGBTIQ+ rights but other rights and provisions that will be of benefit to sexual minorities claiming asylum – provisions on integration, access to justice, family reunion, sexual violence and many others.

It has been identified that there was a lack of clarity of information prior to the referendum, and there is a great deal of confusion about how the process is currently playing out.

We asked the authors whether they think that all LGBTIQ+ individuals are aware of how Brexit could disproportionately affect them.

Our sense is that people aren't aware – and how could they be? LGBTIQ+ individuals are not defined or self-defined only by their sexual orientation and gender identity.

They are also: black and Asian; migrants, asylum seekers and refugees; women; young

and old; individuals with disabilities; people of faith or no faith; homeless; in poor health; unemployed; and/ or poor.

This is to name just some of the characteristics that determine how laws and policies impact on an individual who is also minoritised on the basis of their sexual orientation or gender identity, and therefore how Brexit will impact on such individuals.

No particular group defined by any of these given characteristics was completely informed about the potential impact of Brexit at the time of the referendum, nor are they necessarily now, so whatever may happen if or when Brexit may occur could be a painful surprise to any individual.

The authors have stated that they believe the EU is ‘viewed as ‘the’ sexual minorities’ champion’.

We wondered whether they think the Brexit vote, and the subsequent threat to this as a channel for progress, was and will be felt more personally by LGBTIQ+ individuals.

An interesting question: while we suggest in

our piece that the EU is viewed as a champion of sexual minorities, the same could be said of the UK government.

Recent years have seen a number of measures put in place to promote the rights of LGBTIQ+ people– civil partnership and marriage laws, gender recognition legislation, and policies on hate crime to name just a few.

This leads to the question of how leaving the EU could affect the UK Government's stance on LGBTIQ+ issues.

The problems here are two-fold (at least): firstly, while there is increasing recognition of LGBTIQ+ rights, this is accompanied by increasing hostility towards migrants and refugees, so those individuals marginalised on both grounds may find themselves falling awkwardly between different agendas.

The second problem is that without EU membership, the UK will not be supported and regulated by that legal framework.

If a future government decides to drop sexual orientation from employment protection, for example, there will be no recourse to the

Court of Justice of the European Union.

Similarly, if the EU makes progress on LGBTIQ+ asylum provisions, for example through new case law or through further directives on asylum or anti-discrimination, the UK is not likely to adopt those same standards.

We wondered whether the article's writers believe there is a best case scenario outcome for Brexit in terms of the protection and continuation of the work already done by the EU in relation to LGBTIQ+ rights.

The best case scenario, in the view of the authors, is that Brexit won't happen.

That aside, the best that can be hoped for is that the UK continues to at least remain a part of the Council of Europe, regulated by the European Convention on Human Rights and decisions made by the European Court of Human Rights, rather than taking the path of a 'British Bill of Rights' to replace the current Human Rights Act that gives further effect to the Convention rights in UK law.

The huge work that Brexit requires of all

Government departments seems to have put that Conservative Party manifesto commitment temporarily on the back-burner, but it is likely to resurface.

You take a sceptical view of how the UK, under the conservatives, will perform in relation to carrying on improvements for LGBTIQ+ individuals post-Brexit.

Through this you talk about the need to ‘step up the domestic fight and build new forums for international cooperation’. Are you aware of any existing channels that people can join in relation to this?

The UK has already seen a significant rise in hate crime post-referendum. Interestingly, this has affected not only migrants and refugees, but also many LGBTIQ+ individuals.

While the UK has relatively strong equality law and an enforcement body to prevent discrimination and promote human rights in the form of the Equality and Human Rights Commission, the driver for much of these measures was the EU.

EU bodies like the Fundamental Rights

Agency (FRA) play an important part in developing guidance, good practice and awareness raising tools. Civil society organisations also work together across member states on equality and rights issues.

It is hoped that, at least for NGOs, these networks and working relationships will survive.

Bodies like the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), the European Council on Refugees and Exiles (ECRE), Rights in Exile, Transgender Europe (TGEU), LGBTI Africa and Rainbow Railroad will be more necessary than ever.

The authors highlight the ‘limited analysis’ that has been done so far in relation to how Brexit will affect LGBTIQ+ individuals. We wondered whether this something they hope to continue to build upon.

The impact of Brexit is so wide-ranging that there are many areas where the implications have not yet been considered and/or are unforeseeable.

This certainly includes the implications for LGBTIQ+ people– and not only in the area of asylum.

For this reason, two of the article’s authors– Nuno Ferreira and Moira Dustin– are working with Susan Millns, head of the Sussex Law School, on a project on gender and queer perspectives on Brexit.

The project includes an edited collection and special issue of a journal, both looking at the implications of Brexit from gender and queer perspectives to be published in 2018 and 2019 respectively.

Our general sense is that gender and sexuality matters have been under-explored in the context of the Brexit debate.

Women and sexual minorities are likely to be affected by Brexit in specific ways, but the focus, certainly of politicians and media commentators, is almost exclusively on trade and immigration.

The SOGICA project is funded by the European Research based in the School of Law, Politics and Sociology.

Its team of four is currently carrying out the fieldwork for the project and invite people to sign up to our mailing list and find out how to get involved, which you can do at web address <http://www.sogica.org/en/the-project/get-involved/>).

The team are: Nuno Ferreira (principal investigator), who will be carrying out field work at European and international level; Carmelo Danisi, who is leading the Italian case study; Moira Dustin, who is carrying out the UK case study; and Nina Held, who is carrying out the German case study.

You can read “Queering Brexit” on Sussex Research Online.

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